19.43

File No. O.B.R.T./43

Legal **DEPARTMENT**

A **BRANCH**

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14

Subject:— Opinions under the Bombay Revenue Tribunal Act 1939.

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Std. Sectt. Slip 24 B a.

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C O N T E N T S.

Legal Department Vol. No. O. B.R.T./ 1943.

Sr. No.	Compilation No.	Subject	Pages
	O.B.R.T./1943	Opinions under the Bombay Revenue Tribunal Act, 1939.	
1.	R.L.A.'s Cir.No.285 dt. 13-1-43	Re:Instructions to the District Government Pleaders to return the papers sent to them by the Bombay Revenue Tribunal, on or before the date specified by the Tribunal.	
2.	O.No.6474/27-9-43	Re:Encroachment notice issued by a Municipality in respect of encroachment on its land. Appeal by the party concerned to the B.R.T. against the order of the Collector.	
3.	O.NO.6962/19-10-43	Re:Appeal to the B.R.T. against the imposition of non-agricultural assessment upon land used for the n.a. purposes of a residential building and shed which was used partly as a store-room and partly for residential purposes.	
4.	O.N .8455/16-11-43	Re:adjournments in respect of B.R.T. cases. Govt. desirous of having adjournment of hearing, intimation should be given to the President's office in good time to enable it to give adequate notice of the adjournment to the party.	
5.	R.I.No.10860/18-11-43	RB:G.C., R.D. No. 3724/39 dt. 17-11-43. Re:B.R.Tribunal Procedure for presentation of Govt.'s case before - in cases to be decided after obtaining Govt.'s written statement.	

S.C.-3/5.

PSL 7/16

O.No. 104/24-7-43.

Bombay Land Revenue Code, 1879 - section 66.

Re:unauthorised use of mortgaged land by mortgatee in possession.

No. 285

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 13th January 1943.

CIRCULAR

Complaints have been received that when papers are sent by the Bombay Revenue Tribunal to the District Governm Pleaders to be returned before a specific date, the papers are not returned in time. This causes considerable inconvenience to the Bombay Revenue Tribunal. All the Districts Government Pleaders are accordingly requested to see that papers ~~xx~~ are returned to the Bombay Revenue T Tribunal on or before the date specified.

Remembrancer of Legal Affairs,

Sd/- 12-1-43

To

All the District Government Pleaders,
The Government Pleader, High Court, Bombay,
The Assistant Government Pleader, High Court, Bombay.

True Copy - Original papers being of bad quality - Destroyed.

Superintendent,
D. Branch, Legal Department.

S.C.
4 Copies
8-5-

Bombay Revenue Tribunal Appeal (Ahmed.

Chronological Statement of Facts.

1. This is an appeal to the Bombay Revenue Tribunal against the order of the Collector of Ahmadabad No.C.T.S.R. 257, dated the 23rd September 1940 rejecting the claim of the appellant.

Slip a case pps page 5

2. The appellant claims ownership on an area measuring 2"-7" x 21"-3" situated to the North of the survey No. 2769 of Raikhad Ward, Ahmadabad City. The appellant has a pakka building on this area. He has also constructed certain structures on it.

p.27 case pps.

3. S.Nos. 2769 and 2770 were formed out of old C.T.S.No 60 and 42 respectively. In the enquiryx register the area of the new S.Nos. was shown to be 31 sq.yards and 25 sq. yards respectively. In 1939 it was found out that there was a mistake in the area recorded in the Property Register. The municipal surveyor worked out the area and revised the S.Nos. The Inspector of Land Revenue Records varified the calculations and corrections were carried out by the City Survey Officer in the Property Regis er.

p.15 case pps.

4. The appellant's main contention in the above case is that of ownership of the area in dispute. The appellant says that he owns the building which is standing over the disputed land for more than 60 years. The appellant is claiming ownership by adverse possession.

5. The appellant first made an appeal to the Collecter of Ahmadabad on 31st January 1940. The appeal was rejected by the Collecter order No.C.T.S.R.257, dated the 23rd September 1940.

p.23 case pps.

6. The appellant has now preferred an appeal to the Bombay Revenue Tribunal against the order of the Collecto. of Ahmadabad and to add the encroached land in new senad of S. No.2769 Raikhad Ward.

S.C.

4 Copies 7-5

Office of the R.L.R.

This relates to an appeal pending before the Bombay Revenue Tribunal. The facts appear to be as follows: The appellant is occupant of land bearing C.T.S. No. 2769, and a house stands thereon covering an area of 37 Sq. yds. The site in dispute is shown in red chalk in the sketch at para 7A of the file and measures 2" 7" 21" 3". It appears that the site in occupied by a part of the pucca building which stands on the whole area including that of the new S.No. 2769. The Municipality seems to have issued an encroachment notice, and the appellant requested the Collector to permit him to retain the disputed strip of land to correct the new sanad which showed the area of the holding to be 30 sq. yds. The Collector rejected the request, and hence the appeal.

2. The City Survey Sanad, as originally granted in 1922 stated that the area of the holding, S.No. 2769 was 37 sq. yds. This was substituted by a new sanad in 1939, specifying the area as 30 sq. yds. and thereby causing the disputed area to be treated as an encroachment. A sanad is binding as between the grantor and the grantee. It is doubtful if the sanad can lawfully altered to the detriment of the granted and without his consent. It is true that rule 15(1) of the Bombay Land Revenue Rules, 1921, encovers the Director of Land Records to correct any arithmetical or clerical error. But it is doubtful whether it can be said that this is a case indisputedly of an "arthmetical or clerical error." Moreover, the High Court has laid down that the powers under section 211 of the Bombay Land Revenue Code, 1879, cannot be exercised in respect of a document embodying the terms and conditions agreed to between Government and the occupants: The operation of the principle there laid down would appear to limit the power under rule 15(1) to cases where the error does not affect a sanad, or if it does, where the error is obvious and undisputed. Furthermore it appears from the papers that the new measurement of C.T.S.

S. No 2769 which discloses the encroachment is balanced by the new measurement of C.T.S. no. 2770, since the original total area of the two C.T. S.Nos. (37-25) 62 sq yds. remains the same i.e. (32-30) 62, after the new measurement. (see also A on para 15 and page 47 of loose papers. If so, there seems no resultant encroachment or Govt. or municipal land.

3. The appellant would also appear to have a good case in support of the contention that he has in any event acquired title by adverse possession. The house seems to be a permanant structure and part of it occupies the disputed land; it is stated to be an old building. The Collector's letter at para 11 suggests that this evidence is untrustworthy for the reason that from column 8 of the Extract of the Enquiry Register it appears that Mulia Morar, the appellant's predecessor-in-title, admitted before the Enquiry Officer that the katcha Otta on the west and north of S.No. 2769 was an encroachment on public street. The internal evidence of the Register however, tends to suggest that the admission was not with respect to the land now indispute. In the first place, the land to which it relates was occupied by a katcha otta, whereas the site in dispute is occupied by a part of the main building. There appears cogent evidence to shew that the appellant's averment, that the main building (of which the alleged encroachment seems to be an integral part) has not been altered for over 60 years, is untrue. Moreover, the property Register shown the area of the holding to be 37 Sq. yds. so that the admitted encroachment must be taken to relate to land falling outside that area. The building is an old one, and a presumption of the appellant's title thereto arises under section 110 of the Evidence Act. The question therefore is whether there is evidence to rebut that presumption. In considering this question it is to be borne in mind that if the land be deemed not to belong to the appellant, it would form part of a public street vesting in the Municipality, under section 63 of the Bombay Municipal Boroughs Act, 1925. The Municipality has adduced no evidence to prove that the land belonged to it within the last thirty years.

4. In the result, the evidence does not justify the view that the appellant has no case and it seems difficult to defend the Collector's order.

Remembrancer of Legal Affairs.

J.R. to R.D No. 6479 dt 27th Sept 1943.

T is relates to an appeal to the B.R.T. filed by Messrs. M.V. and K.V. Parab ageist the imposition of non-agricultural assessment upon land used for the n.a. purposes of a residential house and shed which was used partly as a store-room and partly for residential purpcses. The President of the B.R.T. requests Government to file a written statement to show cause why the appellants should not be held entitled, to the benefit c. buildings having been constructed prior to 1905.

2. The R.D. is of the view that there is evidence to xhxw show that the buildings were in fact constructed before 1905; the Mahalkari on personal inspection was of opinion that the building was 75 years old and there is no evidence which shows that it was constructed after 1905. In the circumstances the appellants would be entitled to the benefit of the G.R. of 1939. The R.D. office note suggests that the appeal may be said to be time-barred, but the under Secy. doubts whether the Tribunal will throw out the appeal solely on the ground of limitation. The latter view is correct; the tribunal has revisional powers under sec. 211, B.L.R. Code and in a fit case does waive the objection as to limitation See Selected Decisions for 1941, Part I, p. 69.

3. Reply may be ; "Seen and returned. The President may be informed on the lines suggested by U.S.R.D.

Sd./13-10

Office of the R.L.A.

Seen and returned, The President may be informed on the lines suggested by Under Secretary, R.D.

Id/- P.N.M.
16/10
Remembrancer of Legal Affairs.

U.R. to R.D.No. 6962, dated the 19th October 1943.

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Legal Department

This Department found it difficult to attend to the B.R.T. cases fixed for hearing during the last two sittings of the Tribunal with such despatch as is desirable. That was due to the fact that there has been an abnormal increase in litigation work recently Proposals to strengthen the Department by addition of staff requisite to deal with the additional work are already under Government's consideration, and it is expected that when these proposals are adopted, it will be possible for this Department to deal with these cases expeditiously as before.

2. R.L.A. concurs in the view expressed by the President and Secretary,R.D. that it is desirable that in every case in which Government desires an adjournment of hearing, intimation should begiven to the President's Office in good time to enable it to give adequate notice of the adjournment to the other party. Ordinarily it will suffice if Government's letter requesting adjournment is received in the Tribunal's Office at least two clear weeks before the commencement of the sitting during which the case may be fixed for hearing. The R.D. may therefore ask for an adjournment in all cases wherein the Collector's report(or further information and document is called for from him, as the case may be) is not received at least 6 clear weeks before the commencement of suc sitting. In other cases, if this Department proposes also to supplement the action proposed to be taken by the R.D. on the following lines. About a month before the commencement of a sitting proposes to compile a list of cases fixed for hearing in that sitting. (information in respect whereof may kindly be passed on to this Department as soon as it is received by the R.D.) and to bring to the notice of the R.D. cases wherein as adjournment is necessary.

Sd/ 15-10

Secretary to Government.

Bombay Revenue Tribunal
Procedure for presentation of Government's case before -- in cases to be decided after obtaining Government's ~~xx~~ written statement.

Government of Bombay.
Revenue Department
Circular No.3724/39.
Bombay Castle, 17th November 1943.

Circular of Government

The present treatment of cases where the Bombay Revenue Tribunal calls for a written statement on behalf of Government has been found unsatisfactory. To ensure greater accuracy in the treatment of these cases Government desires to extend the procedure laid down for preparing cases fixed for argument to cases in which only a statment has been called for on behalf of Government. Collectors are accordingly requested in future to follow the procedure laid down in paragraphs (2) and (3) of Government -- Circular, No.3724/39, dated 16th August 1941 in all cases. Collectors are requested to see that their reports reach the Commissioners in time to enable the letter to forward them to the Revenue Department six weeks before expiry of the date within which submission of the statement is called for. The Bombay Revenue Tribunal is being seperately requested to extend this letter period to 3 months.

By order of the Governor of Bombay.

J. D. Bowman,
Under Secretary to Government.

To

The Commissioners of Divisions,
The Commissioner of Excise,
All Collectors,
The Collector of Bombay, Land Revenue Department,
The Remembrancer of Legal Affairs.

No. of 1943.

Copy forwarded for information and ~~xx~~ guidance to

S.C.
4 copies 8-5-

was entrusted as "occupant" in the record of rights, the Dholies

Admittedly Somlal took on 12-12-1928, a deed of mortgage with possession. (Kabja-giro) from Dholis and being shown as "holders of other rights" as well as "tenant Admittedly too Somlal recovered moneys from the Dholis as rent of the mortgaged land leased by him to the Dholi mortg gors. It is perfectly lawful for a mortgagee in possession to arrange for the enjoyment of the usufruct by leasing out the mortgaged property to the mortgagor himself. (see the portion under the heading "lease" on page 365 being comment on section 58 in Mitra's Transfer of Property Act, 9th edn.) Somlal is therefore "occupant" of the land within the defination of section 3 (16) of the Land Revenue Code. The land was used for building huts by the Dholis during 1930, but at no time did Somlal apply for such use under section 65 of the Code, the penultimate paragraph of which provides that "unless the Collector in particular instances otherwise directs, no such application shall be recognized except it be made by the occupant." Somlal as occupant was fined for the unauthorised use under section 66 of the Code The question now is whether the fine is not leviable becaus as is admitted, an application for such use was made by the Dholis firstly on 11-12-1928 and again on 11-1-1930, and (presumably) the Collector failed to inform the Dholis of the decision within three months thereof, so that if the Dholis were occupants when they applied the proviso to section 65 would pperate to make the use authorized.

2. As to the first application of 11-12-1928, it seems that no interest in the land had then vested in the Dholi who completed the purchase of it orally form its previous owner afterwards i.e. on 31-12-1928. The first applicant was not therefore one made by an occupant for the purpose of section 65.

3. As for the second application of 11-1-1930, the ~~the~~ Dholis' status is tow-fold; they are tenants of Somlal and hence not "occupants" qua tenants. But they are also

S.C.

4 Copies 8-5-

holders" of the right of redumption which is an interest in the land, and as such they would be "occupant" since they were also physically in possession of the land. (See section 3 (11) and (16) of the Code.). It is on this account that in addition to being shown as "tenants" in the Record of Rights, they are also shown therein as occupants holding "other rights". The result is that both the Dholis and Semlal Dholis and Semlal were simultaneously "occupant" for the purpose of section 65 of the Code during 1930, and the failure of the Collector to inform the Dholis of his decision ontheir application of 11-1-1930 saves the use from being unauthorized so that the order of fine cannot be defended.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 104-L, dated the 28xth July 1943.

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